



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF JANUARY 22, 2004**

CALL TO ORDER: Vice-Chairperson Wieckowski called the meeting to order at 7:00 p.m.

PRESENT: Vice-Chairperson Wieckowski, Commissioners Harrison, King, Lydon, Sharma

ABSENT: Commissioners Natarajan, Weaver

STAFF PRESENT: Jeff Schwob, Interim Planning Director
Larissa Seto, Senior Deputy City Attorney II
Scott Rennie, Senior Deputy City Attorney
Kathleen Livermore, Senior Planner
Cliff Nguyen, Planner II
Vik Slen, Planner I
Andrew Russell, Associate Civil Engineer
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

INTRODUCTION OF NEW
PLANNING COMMISSIONERS: Daniel Lydon and Richard King

Vice-Chairperson Wieckowski introduced the two new Commissioners and asked them to say a few words about themselves.

Commissioner King stated that he preferred to be called "Rick" and that he had been a City of Fremont resident for approximately 27 years. He had produced and performed in shows in Las Vegas and been a practicing trial lawyer for 40 years. He was recently back in the community after taking a sabbatical for the past four years from his practice in Pleasanton to serve as World President of Rotary International, for which he traveled to 101 countries, and was involved with humanitarian work, such as Polio immunizations, fighting childhood diseases, delivering wheelchairs to the handicapped. He was pleased to be appointed to the Planning Commission along with Daniel Lydon.

Commissioner Lydon stated that he also was appreciative of his Commission appointment. He had been a City of Fremont employee for almost 40 years and had raised five children here. He believed that he had "a fair knowledge of the city" and he was committed to its future.

APPROVAL OF MINUTES: Regular Minutes of December 11, 2003 approved as submitted.

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 2, 4, AND 6

IT WAS MOVED (HARRISON/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1, 2, 4, AND 6.

- Item 1. **BACCARAT RAILROAD LLC – 41075 Railroad Avenue – (PLN2000-00059)** – to consider an appeal regarding the completeness of an application for a Preliminary Grading Plan and an Initial Study and to consider a Preliminary Grading Plan for a 15-acre site zoned I-L Light Industrial located in the Irvington Planning Area. (Continued from November 6, 2003.)

CONTINUE TO FEBRUARY 26, 2004 OR THE NEXT REGULARLY SCHEDULED MEETING THEREAFTER SHOULD THE FEBRUARY 26TH MEETING BE CANCELED.

- Item 2. **MARLAIS – MISSION – 43360 Mission Boulevard – (PLN2002-00100)** – to consider a General Plan Amendment to change a portion of the land use designation from Community Commercial (Historic Overlay) and Low Density Residential 2-3.5 du/ac (Historic Overlay) to Low Density Residential 5-7 du/ac (Historic Overlay) for a .92-acre site located in the Mission San Jose Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project.

HOLD PUBLIC HEARING;

AND

RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND THE CITY COUNCIL APPROVE DRAFT MITIGATED NEGATIVE DECLARATION WITH A CERTIFICATE OF FEE EXEMPTION AND FIND IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

FIND PLN2002-00100 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

RECOMMEND PLN2002-00100 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (GENERAL PLAN AMENDMENT).

- Item 4. **PALM AVENUE – 42052 Palm Avenue (PLN2004-00045)** - to consider a Tentative Tract Map (TR7476), Private Street, and Preliminary Grading Plan for a previously approved Preliminary and Precise Planned District for four new single-family detached dwelling units, retention of one detached single-family dwelling unit and dedication of Parcel A to the Alameda County Flood Control District. A Mitigated Negative Declaration has been previously adopted.

HOLD PUBLIC HEARING;

AND

FIND PREVIOUSLY APPROVED MITIGATED NEGATIVE DECLARATION ADDRESSES THE PROJECT AND NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FIND PLN2004-00045 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS;

AND

FIND PLN2004-00045, AS PER EXHIBIT "A" (TENTATIVE TRACT MAP 7476), EXHIBIT "C" (PRELIMINARY GRADING PLAN), AND EXHIBIT "E" (PRIVATE STREET), FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND

APPROVE TENTATIVE TRACT MAP TR 7476 (AS SHOWN IN EXHIBIT "A" AND SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B"), PRELIMINARY GRADING PLAN (AS SHOWN IN EXHIBIT "C" AND SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "D"), AND PRIVATE STREET (AS SHOWN IN EXHIBIT "E", AND SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "F").

- Item 6. FIRE STATION NO. 7 – 43600 Grimmer Boulevard – (PLN2004-00132)** - to consider a Conditional Use Permit for the expansion and renovation of an existing fire station located in the Industrial Planning Area. This project is categorically exempt under Section 15302 of the CEQA Guidelines (Class 2) pertaining to Replacement or Reconstruction.

MODIFICATION TO EXHIBIT "B"

Add the following conditions:

1. *The applicant shall install an automatic fire sprinkler system in the building for fire protection purposes. Water flow and control valves must be monitored by a central alarm monitoring system and Central Station. The monitoring system shall have a smoke detector placed over the fire panel, a pull station, and an audible device located in a normally occupied location.*
2. Plan, specifications, equipment lists and calculations for the required sprinkler system must be submitted to the Fremont Fire Department Authority and Building Department for review and approval prior to installation. A separate plan review fee is required. Standard Required: N.F.P.A. 13
3. All Automatic Fire Suppression Systems Fire Department Connections shall have the following installed/provided
 - a) Address placard installed at the connection.
 - b) Knox Cap installed on every inlet.
4. Prior to installation, plans and specifications for the underground fire service line must be submitted to the Fremont Fire Authority and Building Department for review and approval. Please include cathodic protection or soils report stating why protection is not required. Standard Required: N.F.P.A. 24 and N.F.P.A 14
5. The applicant shall provide the Fremont Fire Department with a site plan/ Civil Utility Plan for approval of public and on-site fire hydrant locations.
6. The applicant shall comply with Fremont code requirements for installation of fire retardant roof coverings.
7. The applicant shall have a key box (Knox brand) located outside of building/gate and provide keys to the Fire Department so they may gain access. Vehicle gates may use Knox lock or keyed over-ride switch. Gate shall also have an infrared receiver installed. Application can be obtained at Fire Administration office, 3300 Capitol Ave, Fremont.
8. The applicant shall install Fire alarm system as required. The system must be monitored. The system must be N.F.P.A. 72 compliant and have an interior audible device per the C.F.C. Upon completion a "UL" serial numbered certificate shall be provided at no cost to the City of Fremont Fire and Life Safety Inspector. Fire alarm systems devices shall be addressable and report to the Central Monitoring Station addressable.

9. Address must always be visible from Public Street. Flag lots must have monument sign and green bott dot.
10. Fire Department Connections for all sprinkler system must be located not more than 100 feet from a fire hydrant. N.F.P.A. 14. All inlets shall have Knox type caps installed.
11. Fire hydrant spacing requirement is 300 feet spacing. The distance is measured as the fire engine travels on all-weather surfaces.

FIND THAT PLN2004-00132 IS CATEGORICALLY EXEMPT UNDER SECTION 15302 OF THE CEQA GUIDELINES (CLASS 2) PERTAINING TO REPLACEMENT OR RECONSTRUCTION OF EXISTING STRUCTURES;

AND

FIND THAT PLN2004-00132 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S FUNDAMENTAL GOALS AND HEALTH AND SAFETY CHAPTERS, AS SET FORTH IN EXHIBIT A, HEREBY ADOPTED BY REFERENCE;

AND

APPROVE PLN2004-00132, CONDITIONAL USE PERMIT AS SHOWN ON EXHIBIT "A" AND EXHIBIT "C", BASED ON FINDINGS AND SUBJECT TO CONDITIONS IDENTIFIED IN EXHIBIT "B".

The motion carried by the following vote:

AYES:	5 – Harrison, King, Lydon, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2 – Natarajan, Weaver
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

Ed Pentaleri, High Street resident, stated that he wished to speak concerning the Lincoln Street apartments that were originally a part of the consent calendar.

Vice-Chairperson Wieckowski advised the speaker that the item would be heard and that he could speak at that time.

PUBLIC HEARING ITEMS

- Item 3. MISSION VILLAS – 615, 669 & 687 Washington Boulevard – (PLN2003-00266)** – to consider a preliminary and precise District for 18 single-family and 54 multi-family residences in the Mission San Jose Planning Area. A Mitigated Negative Declaration has been adopted as part of the General Plan Amendment approved under PLN2002-00321.

Jim Sullivan, Braddock and Logan, stated that two neighborhood meetings had been held, along with meetings with the Mission Chamber of Commerce and conversations with lessees of the adjacent property. He noted that the project had been before the Historical Architectural Review Board (HARB), the homes adjacent to the existing neighborhood would be single story and the color palette could be increased to eight colors. Parking would include 136 spaces where a minimum of 108 spaces was required. A total of eight below market rate (BMR) units would be available. He proposed repainting and adding awnings to

the off-site Irvington service facility building, along with adding some landscaping and a half wall along the frontage of Washington Boulevard, which would allow a credit towards Planned District Amenity. All the neighbors and the adjacent property lessee approved of the improvements.

Commissioner Harrison asked if he could make the Irvington service facility improvements for the 25,000 dollars that was designated for off-site investment.

Mr. Sullivan replied that he was willing to make the improvements, even if they cost more.

Commissioner Sharma thanked the applicant for adding the BMR unit. He asked what those units would sell for.

Mr. Sullivan answered that the price of the units were set by the median income of people living in the county. These units would sell for 265,000 dollars to people who qualified with an income of 70,000 to 80,000 dollars a year. Teachers, firefighters, police officers could buy a nice two-bedroom, two-bathroom townhome. There would be no difference between the BMR units and the market rate units. They would be exactly the same.

Commissioner King asked what the market rate homes would be sold for and how it was decided who would buy the below market rate units.

Mr. Sullivan stated the market rate homes would be in the 400,000-dollar range. The City had a process where people were ranked according to certain priorities. He understood that, previously, approximately 400 people had applied for 20 BMR units.

Senior Planner Livermore read from the report that the City Office of Housing and Redevelopment would conduct the buyer selection process and provide eligible buyers to the developer. After advertising for applicants and reviewing their credentials, a list would be developed.

Senior Deputy City Attorney Seto clarified that the list was established by a lottery. Income and asset levels had to meet certain guidelines.

Commissioner Lydon asked if the Irvington Automotive Center “went away”, could that parcel be added to the development or could that property become an active service station.

Vice-Chairman Wieckowski opened and closed the public hearing.

Senior Planner Livermore responded to Commissioner Lydon’s question by stating that the applicant and staff had contacted the property owner. If the property was ever vacated, staff would consider redesignating it to allow for residential development. It was now a nonconforming use, so if the present use ceased for more than six months, that use would not be allowed to be reestablished, either.

Interim Planning Director Schwob clarified that a conforming commercial use could reoccupy that building, however.

Commissioner Harrison asked if there would be a homeowners association.

Senior Planner Livermore replied that the multifamily portion would have a homeowner’s association and the single-family portion would not.

Commissioner Sharma asked why there would be no homeowner’s association for the single-family portion, although it was a single development. Was it because none of the single-family homes would face the common area for the townhomes?

Senior Planner Livermore stated that there was no common area shared between the two different components and conditioning a homeowners association was at the developer's discretion for single family developments.

Commissioner Sharma asked if the City had worked out a solution for the height of the multi-story units that HARB had discussed.

Senior Planner Livermore replied that the applicant had agreed to lower the height by lowering the pitch of the roof.

Mr. Sullivan closed with stating the there were two distinct projects with two separate CC&Rs for each portion of the development. There would be no management company or homeowners association affiliated with the single-family homes, because there would be no common area. However, there would be a management company for the multifamily portion of the development.

Commissioner Sharma asked if there would be a mechanism to implement the CC&Rs for the single-family portion without a management company.

Mr. Sullivan replied that all of his single-family, detached developments had CC&Rs, but the only enforcement mechanism was among themselves. The CC&Rs were recorded documents and would run with the land.

Commissioner Lydon commented, for the record, that when he spoke with the neighbors, the applicant had received high marks for his willingness to work with them.

Senior Planner Livermore stated that HARB had recommended eight colors rather than the four colors suggested by the applicant. If the Commission had no comment, the four colors would be offered.

Commissioner Sharma believed that four colors were adequate.

Commissioner Harrison asked if the EVA in question had been eliminated and if the corresponding condition should be deleted.

Senior Planner Livermore replied that there were now two EVAs, so the sentence involving the bollards should be stricken.

Commissioner Harrison noted that it would be the last sentence in Condition G-9. He echoed Commissioner Lydon's comment. The neighbors with concerns gave nothing but high marks to the applicant. He complimented the applicant for successfully working with the neighbors, for adding one more BMR unit, for superior architecture and design, for providing more parking than was required, and for improving the Irvington Automotive Center eyesore. He also complimented HARB for bringing forth their concerns.

Commissioner Sharma agreed that this was a good project.

IT WAS MOVED (HARRISON/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING**

AND

STRIKE THE LAST SENTENCE IN CONDITION G-9;

AND

ADD A CONDITION C-7 REQUIRING A HOMEOWNER FOR THE MULTI-FAMILY UNITS;

AND
RECOMMEND THE CITY COUNCIL FIND THE PREVIOUS INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -
- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES, AND NO NEW IMPACTS HAVE BEEN IDENTIFIED. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND
FIND PLN2003-00266 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S HOUSING AND LAND USE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND
FIND PLN2003-00266, AS PER EXHIBIT "A" (SITE PLAN, FLOOR PLANS, ELEVATIONS AND LANDSCAPE PLANS), FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND
RECOMMEND TO THE CITY COUNCIL THE PRELIMINARY AND PRECISE SITE PLAN FOR PLN2003-00266 AS SHOWN ON EXHIBIT "B" (ZONING EXHIBIT) AND EXHIBIT "A" SHEET(S) 1-47 (PRELIMINARY AND PRECISE SITE PLAN, PRELIMINARY LANDSCAPE PLAN, FLOOR PLANS AND ELEVATIONS) AND EXHIBIT "D" (MATERIAL COLOR AND SAMPLE BOARD) FOR PLN2003-00266 BE APPROVED, BASED UPON THE FINDINGS CONTAINED IN THIS REPORT AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "E".

The motion carried by the following vote:

AYES: 5 – Harrison, King, Lydon, Sharma, Wieckowski
NOES: 0
ABSTAIN: 0
ABSENT: 2 – Natarajan, Weaver
RECUSE: 0

Item 5. **LINCOLN STREET HOUSING – 40852 ~~Irvington Avenue~~ Lincoln Street – (PLN2004-00124)** – to consider a Rezoning from R-G-29 to R-3-18 for consistency with the City's certified Housing Element for development of a multi-family housing project. A Mitigated Negative Declaration has been prepared for this project.

Interim Planning Director Schwob explained that this item was removed from the consent calendar by staff because the Public Hearing Notice contained the wrong street name, which resulted in a noticing error. Staff wanted to allow any of the public who wished to speak to do so at this meeting and to continue the public hearing to the next regularly scheduled meeting. In the meantime, another notice would be mailed.

Commissioner Harrison asked why public comments should be taken at this meeting, if this item was going to be renoticed.

Interim Planning Director Schwob replied that some people who wish to speak might be at this meeting.

Vice-Chairman Wieckowski opened the public hearing.

Ed Pentaleri, owner of the Hiram Davis house on High Street, stated that he had attended the community meeting, and he expected that a good quality development would be brought to his community. In isolation, the architecture was well thought out and would provide some amenities for the development's residents. However, speaking for himself and the neighbors

in attendance, the architectural design would not fit into the neighborhood of late 1880s to 1940s traditional architecture. The design of the buildings in the project showed flat, slanted roofs and modern, minimalist elements. When the speaker expressed his concerns to the architect, he was not very receptive and claimed that the plans could not be changed at this point.

Commissioner Sharma replied that many apartment complexes nearby that did not seem to be as old as the single-family homes. He asked if the speaker had any issue with the development of the property, per se.

Mr. Pentaleri agreed that the apartment buildings were not as old as the single family residences and pointed out that this building would be the only one without a gable-style roof. It seemed to make sense to develop buildings that were more traditional and blended with the existing building. He had no complaint about the property being developed, but he believed now was the time to speak out about the architecture.

Commissioner King asked the speaker's opinion about the appearance of the project. What would he want?

Mr. Pentaleri replied that he felt the development surrounding the Hiram Davis house was a good example. Architectural elements from that home and the surrounding neighborhood should be incorporated into the development, such as, gabled roofs, more traditional window elements and traditional textures.

Commissioner King asked if the architect had stated those changes could not be made. He also asked how many neighbors were with him and if he was speaking for them.

Mr. Pentaleri replied that the architect "was pushing back." He later had a good discussion with him, but he seemed committed to his current design. He had seen photos at the community meeting of other projects that the architect had designed and his project in Concord would be more appropriate within the neighborhood of traditional-styled homes. He stated that he was speaking for all of the people present who had raised their hands.

Commissioner Harrison asked if the architecture would be coming back to the Commission, as no one on the Commission had seen it.

Commissioner King asked if staff had seen the architecture.

Interim Planning Director Schwob stated that he had not seen the architecture, either. The site rezoning was before the Commission, at this time. If the project moved forward, a project of ten or less units would be subject to Development Organization staff review, 11 or more units would be subject to Commission review.

Planner Nguyen stated that he had seen the proposed conceptual architectural plans; however, no comments had been provided to the applicant at this time.

Commissioner Sharma felt that the neighbors were reasonable and genuine and the neighbors' concerns should be given some weight. For the record, he stated that the Commission would do its best to achieve that goal.

Vice-Chairman Wieckowski asked if, when considering a rezoning, a condition could be required that would bring this project back to the Commission for architectural review.

Interim Planning Director Schwob stated that a condition could not be applied. Of course, the Commission could encourage that the design be compatible with the surrounding neighborhood. He understood that the project would encompass eleven units, which would

come back to the Commission for review. If this project did not move forward, someone else could acquire the property and propose ten units, which would not come before the Commission. It did not mean that staff would not take the neighborhood's concerns into consideration, among many criteria that would be looked at. Based upon the comments received by staff so far, the redevelopment staff had been notified that the design was a concern, and they would certainly express to the applicant that it was in their strong interest that they respond positively to the community and its concerns.

Mr. Pentaleri stated that when he attended the community meeting, he had expected that the community's comments would be taken into consideration. He feared that was not going to take place, which was the impetus for his speaking before the Commission.

IT WAS MOVED (HARRISON/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-1-0) THAT THE PLANNING COMMISSION OPEN PUBLIC HEARING AND CONTINUE PUBLIC HEARING TO FEBRUARY 12, 2004.

The motion carried by the following vote:

AYES:	5 – Harrison, King, Lydon, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2 – Natarajan, Weaver
RECUSE:	0

Vice-Chairman Wieckowski called for a recess at 8:05 p.m.

Vice-Chairman Wieckowski reconvened the meeting at 8:15 p.m.

Item 7. SECONDARY DWELLING UNITS/MULTI-FAMILY PARKING ZTA – Citywide – (PLN2003-00201) – to consider a Zoning Text Amendment to amend applicable sections of Title VIII [Planning and Zoning], Chapter 2 [Zoning] of the Fremont Municipal Code to (i) adopt clear and objective standards for the development of Secondary Dwelling Units for consistency with State Law and implementation of the City's certified Housing Element; and, (ii) clarify provisions allowing parking reductions for multi-family developments. This project is exempt from CEQA review per Sections 15282(i) [Statutory Exemptions] and 15061(b)(3) [Review for Exemption].

Interim Planning Director Schwob introduced Scott Rennie, Assistant Deputy City Attorney, who was assisting with the amendment.

Planner Nguyen described the history of the zoning text amendment. In 2003, the City Council approved a zoning text amendment that eliminated the Zoning Administrator Permit process and public hearing requirements for secondary units in response to State law that was changed in 2002. The currently proposed amendments were changes to the standards, which would provide flexibility for the creation of second units. In addition, the proposed amendment would clarify multi-family parking provisions. A parking reduction for a multifamily project could not be approved, if there was an insufficient amount of off-street parking available in the surrounding neighborhood. It was noted that both the City Council and Planning Commission had held study sessions to provide direction in the drafting of this proposal.

Vice-Chairman Wieckowski asked for clarification of the City Council's directive.

Interim Planning Director Schwob stated that when the new R-3 zoning went before the Planning Commission and City Council, modifications to the City's parking ordinance were also presented. At the time of adoption, the Council requested that an amendment be brought back to address specific areas in the City where on-street parking was not available.

Commissioner Sharma asked how large the second units could be.

Interim Planning Director Schwob replied that the State had established a standard that was 30 percent of the original home or up to 1200 square feet. However, cities were allowed to set their own regulations regarding size, and the City of Fremont was proposing a gradation of sizes based upon lot size up to 900 square feet.

Vice-Chairman Wieckowski opened and closed the public hearing.

Commissioner Harrison asked if the law specifically designated a bedroom for only sleeping. How did the City anticipate preventing over parking where second units were built? He understood that, in the area of the City that Interim Planning Director Schwob alluded to, living rooms were being used by one part of a large family and bedrooms used by another part.

Planner Nguyen replied that if a two-bedroom unit were proposed, one parking space would be required for each bedroom. The California Building Code requirements for egress would also have to be met.

Interim Planning Director Schwob stated that enforcement would be done on a complaint basis. Habitation requirements were a part of the Uniform Housing and Building Codes, but they were quite high. A room without a window that provided no second egress could not, technically, be used as a bedroom.

Commissioner Sharma asked if the owner had to live on the property. He mentioned various scenarios where the owner might not be able to occupy a home on the property.

Interim Planning Director Schwob stated that a family could occupy the main house and the second unit as a single family, or one of the units could be rented with the owner occupying the other.

Planner Nguyen stated that a secondary unit was different from a duplex. If an owner wished to lease the house out, both units would have to be rented to one family. The owner-occupancy requirement was created to protect the character of the neighborhood. Generally, if the owner lived on the site, the property was maintained.

Interim Planning Director Schwob stated that there was no exception and had never been in the past.

Planner Nguyen stated if an extended family occupied one of the dwellings and the owner had to leave for an extended time, the extended family member would have to be added to the title of the property in order to continue living on the property.

Commissioner King asked if an owner was transferred overseas for one year, could he rent his dwelling to someone else, and, if not, was it a change in existing policy.

Planner Nguyen stated that they could not, as that would allow the two units on the property to be treated as a duplex. The policy was not being changed, just clarified.

Commissioner Sharma asked why not allow up to 1200 square feet (as allowed by the State), according to the size of the parcel of land.

Planner Nguyen stated that some sample floor plans had been prepared and the proposal was based on the fact that 900 square feet could comfortably accommodate two bedrooms, two bathrooms, dining area, kitchen and living area. If the allowable second unit size were

increased to 1200 square feet, they would equal or be larger than most of the homes built in the 1960s in the City and the unit would dominate the lot. One parking space per bedroom would also have to be accommodated on the property. As an alternative, a dwelling group permit could allow a larger unit, if the size of the lot could accommodate it. Two bedrooms would be allowed, no matter the square footage of the unit. All rooms would be very large, if the unit was 1200 square feet.

Interim Planning Director Schwob opined that this was philosophical discussion. The intent was to allow a reasonably sized secondary unit, which was meant to be smaller than the primary home on the lot. Since the 1980s, secondary units of only 600 square feet had been allowed. This was a reasonable, middle ground step.

Commissioner King asked if the clarification substantially changed existing policy.

Interim Planning Director Schwob replied that it did, since a larger unit would be allowed depending upon the size of the lot. The standards would be reviewed by staff using a checklist to ensure that the proposal met provisions of the ordinance. Before, a discretionary permit was given, which allowed staff to insist that certain design requirements be met. State law had changed that and no longer allowed that discretion, or the obligation to notify the neighbors. A simple review process had to be put in place, such as a checklist. The big change in the ordinance was the allowable size, and parking options.

Commissioner King asked if staff discretion was eliminated and clear guidelines would be established.

Interim Planning Director Schwob agreed, knowing that the discretion portion was previously eliminated by the City Council last July in order to meet State law.

Planner Nguyen stated that the proposal was consistent with the Housing Element, whose goal was to create 25 secondary dwelling units over the next five years. Along with increasing the allowable size of a secondary dwelling unit, the height would be increased from 12 feet for detached secondary dwelling units, which was sometimes undesirable.

Commissioner Harrison asked how many secondary units had been approved within the last five years.

Planner Nguyen replied that approximately one unit a year had been approved.

Interim Planning Director Schwob stated that the City hoped to increase the number of approved units from one per year to five units per year.

Commissioner Sharma asked if there were any other limitations that hindered homeowners from building secondary units.

Planner Nguyen stated that this proposal would provide flexibility, along with the changes in the parking standards, which should achieve the goals, as indicated in the Housing Element. Before, the secondary unit was not approved if it was not feasible to provide parking in the rear or side yard. This amendment would now allow parking on an extended driveway or on the driveway apron to fulfill one of the parking space requirements.

Vice-Chairman Wieckowski wondered why staff assumed that a two-bedroom unit would have two adults with two vehicles. He argued that, very likely, an adult with one or two children would occupy such a secondary unit and would need only one parking space. He suggested that one parking space per dwelling unit would provide more flexibility for the owner who might be interested in building a second unit.

Planner Nguyen replied that the one space per bedroom could be lowered but not raised if the Commission so wished, consistent with State requirements. The City could not limit the adults that might live in a secondary unit and whom would need off-street parking.

Interim Planning Director Schwob stated, for comparison, that multifamily units required one and one-half parking spaces per studio unit, one space for a one-bedroom unit, and two spaces for a two-bedroom unit.

A discussion ensued concerning how many parking spaces might be needed for two-bedroom secondary dwelling units as the years moved on and tenants changed. Or a one-bedroom unit that two adults shared, thus the need for two parking spaces. It was generally decided that one parking space per bedroom was appropriate. An amnesty concerning illegal second dwelling units was also discussed and how other local cities had handled it.

Commissioner King asked why more people had not built secondary units before this time and was it because of the City's restrictions on size.

Interim Planning Director Schwob stated that any kind of construction cost was high. He believed that parking requirements had actually precluded additional units to be built. This amendment would provide flexibility and liberalize the ordinance quite a bit.

Commissioner Lydon asked how would an emergency responder know which unit to go to if the address was not changed.

Interim Planning Director Schwob stated that a unique address was assigned when new units were developed.

Vice-Chairman Wieckowski asked about the design of these units and how it was reviewed by the City.

Planner Nguyen replied that there would be review by staff and, if the Commission wished, a checklist could be created.

Vice-Chairman Wieckowski asked if open space requirements would affect the building and size of a second dwelling unit.

Planner Nguyen replied that there were not open space standards for single-family homes. However, open space was created by the Zoning setback requirements.

IT WAS MOVED (HARRISON/LYDON) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-2-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

FIND PLN2003-00201 IS EXEMPT FROM REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PER SECTIONS 15282 [STATUTORY EXEMPTION] AND 15061 [REVIEW FOR EXEMPTION];

AND

FIND PLN2003-00201 IS CONSISTENT WITH THE GENERAL PLAN IN THAT IT IMPLEMENTS LAND USE AND HOUSING GOALS AND IMPLEMENTATION PROGRAMS ENUMERATED IN THE STAFF REPORT;

AND

FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT BECAUSE IT ENSURES THE PUBLIC HEALTH, SAFETY AND WELFARE OF COMMUNITIES IN CONFORMANCE WITH STATE LAW;

AND
RECOMMEND PLN2003-00201 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (ZONING TEXT AMENDMENT).

The motion carried by the following vote:

AYES:	5 – Harrison, King, Lydon, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2 – Natarajan, Weaver
RECUSE:	0

Vice-Chairman Wieckowski called for a recess at 9:17 p.m.

Vice-Chairman Wieckowski reconvened the meeting at 9:27 p.m.

- Item 8. AMUSEMENT OR GAME DEVICES AND ARCADES – Citywide – (PLN2004-00004)** - to consider a Zoning Text Amendment to allow amusement or game arcades less than 1,200 square feet in size in C-N Neighborhood Commercial Districts, subject to a Zoning Administrator Permit. Staff also proposes to modify definitions and special provisions (operational standards) applying to amusement or game devices and arcades in all districts. The changes would affect Fremont Municipal Code Sections 4-6102, 5-1206, 8-2106.1, 8-2106.2, 8-21002, 8-21004, 8-21102, 8-21103, 8-21103.1, 8-21202, 8-21203, 8-21204, 8-21302, 8-21303, 8-21312, 8-21313, 8-21412, 8-21414, 8-21502, 8-21503.1, 8-21602, 8-21603 and 8-22130.5. This project is categorically exempt under Section 15303 of the CEQA Guidelines (Class 3) pertaining to new construction and conversion of small facilities.

Commissioner Lydon had requested that this item be removed from the consent calendar for discussion.

Planner Slen stated that a computer game center had been opened in a neighborhood shopping center and, since it fit under the definition of an amusement arcade, it was not allowed. The owner had since applied for the zoning text amendment, subject to a Zoning Administrator Permit for a small-scale business. (This business occupied 1200 square feet.) Other small changes were recommended to clarify the ordinance and to clarify that computer game centers did fit the definition of an arcade.

Vice-Chairman Wieckowski opened the public hearing.

John Weed, Mission Boulevard property owner, questioned if any of the gaming device fees had ever been enforced in the City and asked that establishments that had five or less gaming devices be excluded. He had not seen the fee described in any of the literature for permit applications. He believed that unenforced City regulations should be removed from the books.

Commissioner Sharma asked if he meant that five or less gaming devices should be free.

Mr. Weed replied that he was suggesting that businesses that had five or less should not be regulated. Apparently, the business owner was expected to go into City offices and pay the City five dollars per year for every gaming device he had on his premises, although no one was aware of the ordinance.

Commissioner Lydon stated that he had asked this item be taken off the consent list because he wanted more time "to get his arms around this" before he was asked to make a decision about it.

Vice-Chairman Wieckowski asked how a continuance would affect the applicant's business and if it would result in penalties.

Interim Planning Director Schwob stated that he did not believe continuing this item for two weeks would be a hardship, because the applicant would be allowed to continue operating.

Planner Slen stated that there was no issue in code enforcement. However, he was aware that the applicant's lease was due to be renewed the end of this month and not having this issue resolved before that date could affect his decision.

Interim Planning Director Schwob stated that the Commission could ask the applicant for his opinion.

Commissioner Sharma asked if it was true that a law that was not enforced was now before the Commission. He asked if a problem would be created if five or less devices were not a part of the regulation.

Interim Planning Director Schwob clarified that it was difficult for the City to know of a few devices that might be installed in small businesses. However, pool table fees were always collected. Periodically, the City updated its fee resolutions. This ordinance would address the current issue and the fee portion would be taken up in a separate resolution. The Revenue Officer should be a part of the decision concerning whether less than five gaming devices would be exempt, as it may or may not be feasible to collect those fees.

Commissioner Harrison asked how this ordinance would affect the pizza parlors, the hotels, and bowling alleys that had multiple devices. Would there be more restrictions?

Planner Slen answered that this proposal merely clarified the existing ordinances, but it would not change uses that were allowed in Neighborhood Commercial zones.

Interim Planning Director Schwob clarified that if the pizza place wanted six or more devices, it would have to obtain a zoning administrator permit.

Commissioner Sharma asked if the Commission was being asked to decide about a specific fee for this specific 1200 square foot business.

Interim Planning Director Schwob replied that standards were being established for the review of future projects, regardless of their size. The language would also be changed to be consistent from one district to another. Fees were a separate issue.

Commissioner Harrison agreed with Commissioner Lydon's request for a continuance. He asked that police calls that involved similar gaming facilities be made available at the next meeting.

Planner Slen stated that he believed that all computer gaming facilities had been identified.

Commissioner Lydon stated that he wanted to get the ducks in a row for the future and asked if this item would be noticed.

Planner Slen stated that a display advertisement was done, and people who had asked about similar uses had been notified by mail.

Interim Planning Director Schwob explained that, in the future, if an application came to the city, all of the property owners and tenants within 300 feet would be notified of that particular establishment's proposal.

Commissioner Lydon asked what would happen if there were no residents within 300 feet.

Planner Slen replied that the commercial property owners would be notified.

Vice-Chairman Wieckowski asked if this item was approved tonight, when would the Council hear it. He asked Mr. Lee, the owner, if he would be put out of business if this item was continued.

Planner Slen replied that it would be heard by the City Council in approximately one month.

Mr. Lee stated that he did not know how it would affect his lease until he had spoken with his landlord. He stated that his clientele included parents with their children who came in to play the games, people who came in to browse the web and check their email. It was great for the neighborhood. He never had problems that had caused the police to come. However, he had called the police one time when there was a fight outside the pizza parlor next door. He stated that he was willing to call the police any time there might be trouble outside in the parking lot to ensure that he was not blamed, as he was in a high-traffic location.

Commissioner Harrison asked why board games were included in the list of the definition of a game. He wondered if the six Candyland games at his neighborhood childcare center would be cause for a permit.

Planner Slen stated that they probably did not rent out those games and would therefore be exempt.

Commissioner King felt that Mr. Weed's comments made sense. He asked if the financial impact of not regulating businesses with five or less gaming devices could be calculated and brought back with this item. He apologized to the applicant, who had waited three hours for his item to be heard, for a decision that would not be made.

Commissioner Sharma supported a continuance.

Commissioner King asked if page five meant that a five-dollar fee was charged per bowling alley lane. He could not believe that existing bowling alleys had been paying that.

Planner Slen stated that it was 25 dollars, but there was a cap.

IT WAS MOVED (HARRISON/KING) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-1-0) THAT THE PLANNING COMMISSION CONTINUE TO FEBRUARY 12, 2004.

The motion carried by the following vote:

AYES:	5 – Harrison, King, Lydon, Sharma, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	2 – Natarajan, Weaver
RECUSE:	0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Discussion – 2004 Planners Institute

Interim Planning Director Schwob stated the new Planning Commissioners were encouraged to attend the Planners Institute. Registration would be paid, however, attendees would have to make arrangements and pay for their own lodging. The other interested Planning Commissioners would have to pay all expenses.

Commissioner Harrison stated that he and Vice-Chairperson Wieckowski attended a year after being appointed to the Commission and had learned much. The "How To" Track was especially informative.

Vice-Chairman Wieckowski also encouraged attendance, as it was very worthwhile.

Interim Planning Director Schwob added that attendance was not confined to attending all the days. One day might be enough.

Commissioner Sharma commented that it was good that part of the cost would be taken care of by the City.

Interim Planning Director Schwob asked that interested Commissioners notify either him or Maria Salinas in the Planning Department as soon as possible.

- **Interim Planning Director Schwob** stated that a list of staff and their phone numbers and email addresses were in the Commissioners' packets, along with those of the Planning Commissioners. A calendar of the Planning Commission meeting dates was also included.
- Information from Commission: Commission members may report on matters of interest.

None

Meeting adjourned at 9:55 p.m.

SUBMITTED BY:

Alice Malotte
Recording Clerk

APPROVED BY:

Jeff Schwob, Secretary
Planning Commission